Filed 9/15/09 P. v. Linares CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. JACQUELIN LINARES, Defendant and Appellant.	B211688 (Los Angeles County Super. Ct. No. PA055285)

APPEAL from a judgment of the Superior Court of Los Angeles County. Alice C. Hill, Judge. Affirmed.

Marcia C. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C. Johnson and Taylor Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

_____

Appellant Jacquelin Linares was convicted, following a jury trial, of one count of first degree murder in violation of Penal Code section 187, subdivision (a), and one count of assault of a child causing death in violation of section 273ab. The trial court sentenced appellant to a term of 25 years to life in state prison for the murder conviction and stayed sentence on the assault conviction pursuant to section 654.

Appellant appeals from the judgment of conviction, contending that the trial court erred in denying her motion to suppress her confession. Appellant also requests that we review the trial court's ruling on her *Pitchess* motion. We affirm the judgment of conviction.

Facts

On May 2, 2006, the body of a baby was found in a dumpster at a mobile home park in Newhall. The baby was wrapped in a shirt, towel and some plastic bags. She was dead. Her body was stiff and cold. Her umbilical cord was still attached, and it was bleeding. Her hair was damp and she had mucus in her nose and mouth.

An autopsy revealed that the baby had been born alive without abnormalities that would have caused her death. She had suffered multiple blunt impact head injuries after being born. The injuries were not consistent with a fall from the top of a piece of furniture such as a desk, or a fall from a woman giving birth while standing up. Greater force would have been required. The cause of death could have been the head injuries, loss of blood through her untied umbilical cord, exposure or asphyxia. The medical examiner found the death to be a homicide.

On May 15, 2006, Los Angeles County Sheriff's Detective Margarita Barron and other sheriff's deputies served a search warrant at a mobile home in the park occupied by appellant, her boyfriend Jose De La Cruz, appellant's twin daughter and son and two other men. The deputies found blood stains on the floor, walls, and ceiling of the bathroom and on a cabinet in that room.

Forensic tests showed that blood on the bathroom wall matched the baby's DNA profile. The baby was a contributor to the blood found on the bathroom cabinet. The

baby could not be excluded as a contributor to blood found on the shower curtain. The baby's blood was not found anywhere else in the bathroom. Forensic tests also showed that some blood on the towel matched appellant's DNA profile. The baby was a possible contributor to a second blood stain on the towel. DNA testing showed that appellant was the baby's mother, but De La Cruz was not the father.

Detectives Barron and Schoonmaker interviewed appellant at the sheriff's station. The interview was conducted in Spanish by Detective Barron, whose first language is Spanish. Appellant told the detectives that the father of her twin children had abandoned her when he found out that she was pregnant. Appellant initially denied that she had been pregnant in 2006, then admitted it. She identified the father as "Michel." When she told him that she was pregnant, he denied that he was the father and left her. Appellant then began dating De La Cruz. She did not tell him that she was pregnant because she was afraid he would leave her. Appellant moved in with De La Cruz about four to six months before the birth of the baby.

On May 1, 2006, appellant had stomach pains. She went into the bathroom to take a shower. The baby came out and fell on the floor while appellant was in the shower. Appellant left the baby on the floor and cleaned up the blood. She then wrapped the baby in a towel, threw her in some plastic bags, and took her to the dumpster. She knew that the baby would eventually die.

Appellant told the detectives that she felt rage and hatred toward the baby because Michel was the father and would not take responsibility. She did not know how she would support the baby. When asked about the baby's head injuries, appellant suggested that the baby hit her head on the floor during birth, and might have hit her head on the cabinet when appellant threw her into the plastic bags. Detective Barron asked appellant if De La Cruz helped her kill the baby. Appellant denied this and claimed that she acted alone.

Discussion

1. Appellant's confession

Appellant contends that her statements to police were involuntary and the trial court erred in denying her motion to suppress those statements.[1]

In order for a defendant's confession to be admissible at trial, the prosecution must show by a preponderance of the evidence that the confession was made voluntarily. (*People* v. *Boyette* (2002) 29 Cal.4th 381, 411.)

On appeal, the trial court's findings as to the circumstances surrounding the confession are upheld if supported by substantial evidence, but the trial court's finding as to the voluntariness of the confession is subject to independent review. (*People* v. *Boyette*, *supra*, 29 Cal.4th at p. 411.)

The voluntariness of a confession is determined by the totality of the circumstances, including the characteristics of the accused and the details of the interrogation. (*People* v. *Hill* (1992) 3 Cal.4th 959, 981, overruled on other grounds by *Price* v. *Superior Court* (2001) 25 Cal.4th 1046.) No single factor is dispositive in determining voluntariness. (*People* v. *Williams* (1997) 16 Cal.4th 635, 661.)

A confession can be involuntary when it was obtained by "'any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertion of any improper influence. [Citations.]'" (*People* v. *Benson* (1990) 52 Cal.3d 754, 778.) However, "[w]hen the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, [there is] nothing improper in such police activity." (*People* v. *Hill* (1967) 66 Cal.2d 536, 539.) It

---

[1] Appellant was questioned in an interview room at the police station. She was not initially read her rights under *Miranda* v. *Arizona* (1966) 384 U.S. 436. These rights were read to her after she acknowledged giving birth to the baby. In the trial court, appellant sought to suppress her confession on the ground that it was obtained in violation of *Miranda*, *supra*, and also on the ground that it was induced by promises of leniency. The trial court found no *Miranda* violation and found the confession voluntary. On appeal, appellant claims error only in the trial court's ruling about promises of leniency.

is well settled that mere advice or exhortation by the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or a promise does not render a subsequent confession involuntary. (*People* v. *Howard* (1988) 44 Cal.3d 375, 398.)

Appellant contends that Detective Barron first implied, then promised leniency if appellant told the truth and that the prospect of that leniency motivated her to speak. She points to two sets of statements by Detective Barron to support her claim.

The first set of statements quoted by appellant, read as a whole, does not imply leniency if appellant told the truth. As respondent notes, the exhortations to tell the truth began after appellant denied having been pregnant or giving birth. Detective Barron explained that not only had neighbors observed appellant to be pregnant, but DNA could confirm if the child in the dumpster was appellant's child. As part of this exchange, the detective told appellant that it would be better for "you to uh . . . give me an explanation . . . since I speak Spanish . . . and that we can understand each other well so that later on *they won't think that you wanted to do something wrong.*" (Emphasis by appellant.) The phrase emphasized by appellant, when considered in context, is simply telling appellant that since appellant spoke Spanish it would be better if she made her statement to Detective Barron, who was also a Spanish speaker. This would avoid any misunderstanding due to language differences.

The reference to Spanish was not the end of the detective's statement. She added, "We can use, work with the truth. But as far as lies, please don't tell lies, please don't tell lies." Appellant replied, "But could it be that I'm going to go to jail?" The detective replied: "It de . . . depends on what . . . what may have happened." The detective explained that "Things here, in the United States, are also very different. What we may possibly do in Mexico they could maybe see it as a crime and, in reality, we don't see it that way." Thus, the detective made it clear that appellant's acts might be a crime and

might result in appellant going to jail. There was no implication of leniency in exchange for a confession.[2]

Appellant further claims that the detective's implication of leniency became "a clearer promise of leniency" when the detective made the following statements: "That's why I'm telling you . . . it's that . . . one has to speak with the truth. That's the only thing we want ma'am. Okay? And . . . to get tangled . . . because . . . as far as lying about this and lying about that . . . Sometimes when one tells a lot of lies, ma'am, one gets all . . . one gets confused and one's going to forget which lie led to another one and which lie led to another one. But the truth is going to be the same all the time because you already know that that's the truth. And the truth is that, maybe, uh . . . you were expecting and you didn't know what the customs are here, uh . . . maybe you didn't have any money to bury the [child], uh . . . maybe the customs from El Salvador are very different . . . from the ones here. And . . . and that . . . like I'm telling you, they're different in Mexico and they're also different here. So now is your opportunity, Jacquelin, for you to *tell them the truth, so you won't get in trouble*. And I'm not saying that you're ignorant or that you didn't know, but, it's just that there has to be an explanation for what happened . . . and for you to *tell us what happened and we can see what we can do*. How many months pregnant were you?" (Emphasis by appellant.)

It is most reasonable to understand the detective as saying that telling lies causes trouble because the liar becomes confused and lies more and that it is therefore better to tell the truth. It might also be possible to understand the statements as telling appellant that if she had put the child in the dumpster because she was acting in accordance with the customs in El Salvador or otherwise behaved in accordance with such customs, the detective would try to help her. Appellant did not claim that she was acting in

---

[2] To the extent that appellant contends that the detective acted improperly in implying that appellant might not go to jail, we do not agree. Detective Barron believed that De La Cruz had killed the child and that appellant was covering up for him. If that were true, it would be unlikely that appellant would go to jail, especially if De La Cruz had beaten or coerced appellant in connection with his killing of the child.

accordance with the customs of her native country, and so her confession cannot be viewed as the product of this statement. It is not reasonable to understand this statement as a promise of leniency, since the detective had just made it clear that some acts that were acceptable in other countries were crimes in the United States.

Appellant contends that circumstances surrounding her confession also show that it was involuntary. She describes herself as a frightened and naïve young woman who spoke no English, had little formal education and was afraid that she would lose custody of her two older children. She points out that she was taken from her home to the police station in a patrol car and put in an interview room that was not accessible to the general public.

The trial court made the following findings of fact about the circumstances surrounding the interrogation: "The detective told [appellant] that she needed to speak to [her] and that she would be transported to the sheriff's station. Detective Barron asked [appellant] if she was willing to do that and [appellant] indicated she was. . . . [¶] Detective Barron told [appellant] that she was not under arrest. A consent to transport form was given to [appellant]. . . . [Appellant's] name is handwritten on the form in two places. [Appellant] did not tell Barron that she did not want to go to the station." Once [appellant] was in the interview room, Detective Barron told her "that she could leave at any time, that the defendant was not under arrest." Appellant "indicated to Detective Barron that she understood that . . . [she] was not under arrest and could leave at any time." Detective Barron "spoke in a sympathetic manner indicating there may be cultural reasons for what occurred. Detective Barron was polite and courteous." Appellant did not ask to leave during the interview and did not ask for the questioning to stop. The questioning lasted about two hours.

There is substantial evidence to support the trial court's findings and we defer to those findings. The record also shows that Detective Barron was a Hispanic woman, like appellant, and spoke Spanish. Appellant's responses to the detective's questions show that she understood what was being said to her. Appellant was 22 years old at the time of the interview. At no time during the questioning did Detective Barron or Sergeant

Schoonmaker state or imply that appellant would lose custody of her children. It appears that the interview room was just that. Appellant does not suggest that there was anything unpleasant about the room, such as overly bright lights or a lack of ventilation. Appellant was not restrained. We conclude that there is nothing in the circumstances of appellant's background or the interview that supports a claim that the confession was involuntary.

Assuming for the sake of argument that the trial court erred in admitting appellant's statements made after the above-quoted remarks by Detective Barron, we would find any error harmless beyond a reasonable doubt. (*Chapman* v. *California* (1967) 386 U.S. 18.) There was no dispute that the baby was born alive and died due to the actions of another person. There was also no dispute that the baby was appellant's daughter. The baby's blood was found in the bathroom of appellant's mobile home. The baby was wrapped in a towel that had appellant's blood on it. Appellant initially denied to police that she had been pregnant or given birth, showing a conscious of guilt.[3] There was no evidence linking anyone else to the baby's death.

2. *Pitchess* motion

Appellant requests that this Court conduct an independent review of the in camera proceedings done by the trial court in response to appellant's *Pitchess* motion for discovery of peace officer personnel records of Detectives Barron and Schoonmaker and the supplemental motion for the records of Deputy Trejo. The trial court found that there was no discoverable evidence.

When requested to do so by an appellant, an appellate court can and should independently review the transcript of the trial court's in camera *Pitchess* hearing to determine whether the trial court disclosed all relevant complaints. (*People* v. *Mooc* (2001) 26 Cal.4th 1216, 1229.)

We have reviewed the transcript of both of the in camera proceedings and see no error in the trial court's rulings concerning disclosure.

---

[3] This denial occurred before any alleged promises of leniency.

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.